No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

JOHN MACK,
RESPONDENT,

V.

MICHEAL O'LEARY, ET AL.,
PETITIONERS.

JOHN LIPSCOMB-BEY,
REPONDENT,

V.

HOWARD A. PETERS, III, ET AL.,
PETITIONERS.

ON BRIEF IN RESPONSE TO WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

BRIEF IN RESPONSE TO WRIT OF CERTIORARI FOR PLAINTIFF / RESPONDENT JOHN MACK

MR. JOHN MACK
REGISTER NO. A-73457
D. C.C. P.O. BOX 4002
DANVILLE, IL. 61834

ANSWERS "TO QUESTIONS PRESENTED FOR REVIEW"

Section: 2000bb-1 of the Religious Freedom Restoration Act **(42 U.S.C. § 2000bb-1)** provides, correctly in part, that "government shall not substant -ially burden a person's exercise of religion..." The Seventh Circuit found no ligitimate pressing security reason to override **(in this case)** with a policy **"to force adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs."**

Answers to the questions presented is:

The the Seventh Circuit's definition of substantial burden, which accurately interprets the parameters of the **Religious Freedom Restoration Act,** which by it's very creation, ensures that if there exist any disturbance, or refusal on the parts of the States to to unduely infringe upon "expressions that manifest a central tenet of a persons religious beliefs, or compels con -duct or expressions that is contrary to those beliefs."

Since this goes right the heart of the intentions of the founding fathers (drafters of the constitution), the question is not properly presented has the Seventh Circuit definition of substantial burden, which "conflicts" with definitions formulated by other courts of appeals.

But whether the Seventh circuit has properly interpreted as a judi—— cial entity, the law and limits thereof, drafted by the legislative body of Congress; and should additional limitations be imposed within prison, when - there is no primary overriding legitimate security concern.

PARTIES TO PROCEEDING

Petitioners:

MICHAEL O'LEARY, Deputy Director, Department of Corrections
Salvador A. Godinez, former Warden of Stateville C. C.
Jerome Springborn, Assistant Warden of Programs
James Schomig, Assistant Warden of Operations
Howard A. Peters, lll, former Director, Department of Corrections
George C. Welborn, former Warden of Menard Correctional Center
Alan L. Frentzel, former Assistant Warden of Menard Correctional Center
Leo Hayes, Chaplin

Respondents:

John Mack
John Lee Lipscomb Bey

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28 U.S.C. § 1254(1)

42 U.S.C. § § 2000bb-2000bb-4

42 U.S.C. § 1983

42 U.S.C. § 2000bb.

OPINIONS BELOW

The judgement and opinion of the United States Court of Appeals for the Seventh Circuit of which petitioners seek review is reported at **80 F. 3d 1175 (7th Cir. 1996)** and is not in reprint **(respondent is a pauper)**. The order of the Court of Appeals upon the petitioners' Petition for Rehearing, With Suggestions for Rehearing **En Banc** was denied, and is not reprinted for the abcve stated reason.

The opinion of the District Court for the Northern District of Illinois in **Mack v. O'Leary** is unreported and is in reprint in the appendix at 2-13. The opinion of the District court for the Southern - District of Illinois in **Lipscomb Bey v Peters** is unreported and in not in reprint (this case was consolidated with respondent **Mack** and issues are fundamentally different).

JURISDICTION OF THIS COURT

The judgement of the United States Court of Appeals for the Seventh Circuit of which petitioners seek review was entered on April 3, 1996. Petitioners filed a timely petition for rehearing, with suggestions for rehearing **en banc** was filed with that court on May 8, 1996, u -pon an extension of time granted by the court. The court denied the petition for rehearing on January 8, 1997. The jurisdiction of this Court is invoked by petitioners pursuant to **28 U.S.C. § 1254(1). Note: All of the judges on the original panel voted to deny the petition and none of the active judges has requested a vote on the suggestion for rehearing en banc.**

STATUE INVOLVED

The text of the **RELIGIOUS FREEDOM RESTORATION ACT (42 U.S.C. §§ 2000bb-2000bb-4)** is reprinted in the appendix at 19-21.

STATEMENT OF THE CASE

PROCEEDINGS RELATING TO JOHN MACK

Your Respondend **John Mack**, a citizen of the United States of America and, the State of Illinois, is a practitioner of the Islamic Faith **(a devout muslim)**, an inmate within the Illinois Department of Corrections; and, resident of the Danville Correction Center. Appearing pro se filed a pro se complaint against various officials within the **IDOC** February of 1994, pursuant to **42 U.S.C. § 1983** for alleged deprivations of basic rights guranteed and afforded respondent under the **1st and 14th amends.** to the United States of America's Constitution; as well as being subjected to Cruel and Unusual Punishment as a result thereof. As well in violation of the Religious Freedom Restoration Act **("RFRA")**, RELATING TO THE Ramadan services - held at the Stateville Correctional Center in 1992 and 1993. Respondent in addition claimed that particularly muslim above and beyond other faiths at Stateville were discriminated against; and forced to gather in a clearly un -santized and filthy environment (dinning hall) directly after the general population finshed eating. Respondent further alleged that muslims were pre -vented from engaging in the obligatory form of **wudu**, which is a prerequisite before believers offer their prayers and declare their intention to - fast for the next hourly period to fast. Also the obligatory manner of congregational prayer amongs the believers were prohihibited due to the tables and garbage cans scattered over the recently departed feeding hall.

On january 10, 1995, the district court improperly entered judgement for the defendants and dismissed respondent's claim with prejudice. The determination of the court was based off of it's finding that respondent had failed to state a claim upon relief could be granted, even assuming the truth of respondent's allegations. The court erred in it's conclusion that the claims against defendants in their individual capacities did not violate respondent's federal rights. The court also rule that respondent's alleged claims against defendants in their official capacities were outside - the scope of § 1983 and barred by the Eleventh Amentment. Additional, the court concluded that the **RFRA** was not implicated because respondent failed to establish that the defendants substantially burdened the exercise of his beliefs.

The district court erroneously concluded that defendants made a reasonable effort to provide respondent with the opportunity to prac— tice his faith during the months of Ramadan in 1992 and 1993. The mis- understood the essential element and order for which respondent or mus -lim in general must purify themselves after eating and before the of- fering of prayer. The court determine that respondent had an opportuni -ty to pray in the cafeteria, notwithstandind the unsanitaze condition and the unability to congregate in accordence with tenets to the re- spondent's faith due to the physical impediments of the cafeteria it- self.

Mack filed a timely notice of Appeal.

PROCEEDING RELATING TO JOHN LEE LIPSCOMB BEY

Respondent John Lee Lipscomb Bey, a member of the **Moorish Science Temple of America ("MSTA")** and an inmate of the IDOC, appear— ing pro se, filed a complaint against various officials of the IDOC in January 1992, pursuant to **42 § 1983** for deprivations of his right gu- ranteed by the **1st and 14th amends.** relating to the refusal to permit a MSTA religious banquet on prison grounds with outside guests in at- tendance.

A magistrate judge presided over a bench trial on July 22, 1993. Lipscomb Bey represented himself. On July 27, 1993, the magistrate judge recommended that judgement be entered in favor of the defendants, concluding that the failure of the prison officials to allow the ban- quet did not rise to the level of a constitutional violation. On March 11, 1994 the district court adopted the magistrate findings and conclu- sions and entered judgement in favor of the defendants.

John Lee Lipscomb Bey filed a timely notice of appeal.

DECISION OF THE COURT OF APPEALS

The Seventh Circuit upon it's own druthers discharged an order which consolidated the pro se appellate cases of **John Mack** and **John Lee Lipscomb-Bey** on or about December 3, 1996. The court determined that both cases involved "for the first time the meaning of the term '**substantially burden a person's exercise of religion,' which is the key term in the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb."**

The crux of the court's ruling was that the **RFRA** corrected and/or re-stored limitations imposed on the free exercise of religion; via such case as **Employment Division v. Smith, 494 U.S. 872 (1990).** Although the court went on to ask the question "how far beyond" (did the RFRA extend beyond the **Smith Supra**) noting that the question was posed and answered differently by the different circuits.

The Fourth, Ninth, and Eleventh Circuits define "substantial burden" as that which either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires. While the Eighth and Tenth Circuits aggreed, but went farther by defining to be: action that forces religious adherents to refrain from religiously motivated conduct or that significantly inhibits or constrain conduct or expression that manifests some central tenet of a person's individual beliefs imposes a substantial burden on the exercise of re-ligion. While the Sixth Circuit alternative in conjunction between both similar view; once it determines that the burdened practice is "essential" or "fundamental."

The court saw no evident split amongst the Circuits courts. Only determining that the rulings were conclusive in that any restrictions unduely imposed upon adherents, or mechanism which unduely compels an adherent to unwillingly engage in acts or omossions which is incompatible with adherent-'s belief... to be a substantail burden.

Although the court noted that due to the clear statutory language on it's face, the court determined that some circuits provided a more generous effect of the definition of "substantial burden"

The court ultimately determined that Respondent had made actionable claim, based on the "sustantial burden" term and remanded said cause for further proceedings. In the same decision the court dismissed the re-spondent claim for damages against defendants in their official capacity **(which respondent is not challenging)**, while infering that respondent may have an actionable claim against defendants in their individual capacitiy; if it is determined that said restrictions imposed on plaintiff as an Islamic adherent, were central to the tenets of respondent's faith and obligatory to respondent's fundamental belief.

However, the court reached a different determination on the merit of Respondent John Lee Lipscomp Bey's claim of "substantial burden". Respondent John Lee Lipscomb Bey sought to be allowed to have banquets inconjunction with certain legitimate **Moorish Holy Days**. This included the attempt to have outside guest appear for said desinated Holy Day events.

The court affirmed the dismissal of John Lee Lipscomb Bey's case. It determined that the restrictions imposed were of a term to be defined as a "modest burden", because the defendants were able to establish both "a compelling governmental interest in imposing the 'modest burden' and the absence of any less restrictive alternative.

REASONS FOR GRANTING THE WRIT

The peritioners plea is constructed in their stance that the RFRA is interpreted definition of RFRA is so divergent amongs the various Circuits, in regards to the correct application of the statutory language of the statue. Including a proportionate number of prison cases involved in the application of the statue.

Thus, petitioners "definition" of the Circuits court unmonolithic divergent views of the statue; and, the fact that many prisons administrators must daily promulgate rules inconjunction with the law, the settling of the issue is of paramount of importance

The petitioners main concern addressed as the total underlying thought is due to the cases of **City of Boerne, Texas in City of Boerne v. Flores, No. 95-2074** and **Sullivan v. Sasnett, No. 96-710**, now pending before this court. These cases seek to challenge the constitutionality of the RFRA. Without directly asking to have this cause stayed until the complete adjudication on the constitutionality of RFRA, petitioners request to have this writ of certiorari be considered in —— light of any decision of this court affecting/effecting aforesaid.

I.

THE SEVENTH CIRCUIT'S DEFINITION OF "SUBSTANTIAL BURDEN" AS A TERM CORRECTLY INTERPRETS THE APPLICATION OF THE TERM AS IT RELATES TO THE STATES IMPOSING UNDUE RESTRICTIONS ON BELIEFS THAT MANIFEST A CENTRAL TENET OF A PERSON RELIGIOUS BELIEFS, OR COMPELS CONDUCT OR EXPRESSIONS THAT IS CONTRARY TO THOSE BELIEFS .....

The Religious Freedom Restoration Act **("RFRA")** was created to ensure that the powers of government shall not substantially burden a person's free exercise of religion; unless the government can reasonablly demonstrate that the application of the burden is for the furtherance of the compelling governmental interest and in the least restrictive means of furthering that compelling governmental interest.

The Seventh Circuit in essence and substance aggreed with the decisions of other Circuits courts ruling appropos RFRA. While the Seventh Circuit voiced it's decision and interpretation to entail that: "a substantial burden on the free exercise of religion, within the —— meaning of the Act, is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs.

Petitioners simply quibble with the words and phrasology of the Seventh Circuit's definition of "substantial burden" on the free exercise of religion. While the wording and articulation of the various Circuits natuarally differ, the main impetus of all Circuits is consistent with the recent ruling of the Seventh Circuit in this matter.

Although, petitioners seem to dwell inordinately on the semantics which differ from Circuit to Circuit. While the results which conclude a unified determination of RFRA: that any act which unduely restricts an inmate from fostering and adhering to believed principles of adherents, are prohibited, unless the State can maintain a compelling interest in its actions and is furthering that interest by the at least restrictive means. **Hicks v. Garner, 69 F.3d 22, 26 (5th Cir. 1995) and Small v. Lehman, 98 F.3d 762 767 (3rd Cir. 1996)**

So since the essence of all the Circuits decisions heretofore is to ensure that the statutory language of RFRA, which is clear on it's face, is to be giving effect without stint.

So what is clear is that the Seventh Circuit was correct when it determined that the holding s of the various Circuits on RFRA were not inconsistent, or evidence of an intersplit, but concluded that the more generous definition is more faithful both to the statutory language and to the approach that the courts took before the **Smith** case.

Because the Circuit court may remand a case back to determine if a particular practice was essential to the tenets of ones faith, is afterall in harmony with the true spirit of RFRA. For if upon review it may be ascertained that the alleged burden imposed, was directed at a particular practice which was not essential to the adherent carrying out the obligations of the adherent's faith, the question then of "substantial burden" becomes moot.

However, if upon review the lower court can determine that the alleged restricted practice, on the forcing of the adherent from practicing of a faith mandated obligatory act, the burden is then on the adherent to determine the imposition is of a "substantial burden" by the government.

If the adherent is then sucessful, the burden then shifts to the government to determine if the imposed "substantial burden" is of a com -pelling interest, and the least restrictive means is being employed by the government; instead of the reasonable opportunity the petitioners claim to have presented to Respondent , before the respondent and other believers were forced to "partake in Ramadan" absent being allowed to perform obligatory acts of **Wudu and Salat** in a spiritual prescribed - manner.

THE SEVENTH CIRCUIT'S DEFINITION OF "SUBSTANTIAL BURDEN" AS A TERM CORRECTLY INTERPRETS THE APPLICATION OF THE TERM AS IT RELATES TO THE —— STATES IMPOSING UNDUE RESTRICTIONS ON BELIEFS THAT MANIFEST A CENTRAL TENET OF A PERSON'S RELIGIOUS BELIEFS, OR COMPELS CONDUCT OR EXPRESSION (S) THAT IS CONTRARY TO THOSE BELIEFS .....

The Seventh was correct when it determined that petitioners imposed restriction on the Respondent, limiting the ability of Respondent from practing all of the essential tenets respondent as an adherent; - The court determined after duely reviewing the available record, that petitioners assertion of providing the respondent with "reasonable opportunity", when in fact the forced unacceptable conditions Respondent was subjected to was not the least restrictive alternative available.

The Respondent declared that the imposition placed before Respon -dent and similar adherents of the Islamic Faith, were above and beyond the reasonable accomadations afforded the various other religious faith (s). **Benjamin v. Coughlin, 905 F. 2d 571, 575 (2nd Cir. 1990); Allah v. Menei, 844 F. Supp. 1056 (E.P.D.A. 1994).**

This unequal protection under the law is the primary reason that created the "substantial burden"; nor have the petitioners asserted any compelling interest to not afford Respondent the possibility to practice the essential elements of the Respondent's faith; certified as an unalienable right and mandated by the tenets of the Respondent's faith.

The month of Ramadan being the sacred month for all Muslims over the world, clearly the prescribed methods of worship, were placed to - bring all the adherents together as one Umma **(Islamic Body)** in accordance with the overall command and decree of the Prophet Muhammad **(PBUH)**

and the obligatory submission on the part of the adherants to the commands and decrees fostered by the sacred tenets of Islam. Wallace v. jaffree, 472 U.S. 38, 53, 105 S. Ct. 2479, 2488, 86 L. Ed. 2d (1985)(citing Everson v. Board of Education, 330 U.S. 1,15,67 S.Ct. 504, 511, 91 L. Ed. 711 (1947).

Subsequently the RFRA was created and enacted by Congress to ensure that any restrictions imposed by the government on adherents to reconized religious faiths, a compelling interest of the States had to be demonstrat -ed and for an alternative a less restrictive means had to be substituted.

The manner that muslims pray together, are in ranks of rows, consol -idating the believers together as one, their prayer offering to their One God-**ALLAH**. But prior to said prayer be performed. all believers are compel -led to porform the act of **wudu**, a form of purification means, right be- fore the prayer offering. To force adherents to do differently, when less restrictive means were available **(different facilities which were afforded other adherents of ther faiths)** is incompatible and at odds with the fund- amental tenets of Muslims' beliefs. Wisconsin v. Yoder, 406 U.S. 205, 218 (1972). Creating an unneccessary burden on religion; unfairly characteriz- ed by petitioners **(non-muslims)** as a **"mere inconvenience"**.

This attitude buttressed by petitioners deliberate inertia, is the very thing Congress had in mind when RFRA was enacted and the very idea of excluding the prison setting from the applicability of RFRA was rejected - resoundly by the Congress in the first place.

In essence the petitioners are requesting of the court, to hence- forth disallow the prisoners from engaging in legitimate forms of worship, when clearly there is no compelling governmental interest to impose re- strictions. By glossing over the illussions of the opening of "pandora's - door" and all forms for superflous inartful forms of demands of worship u- pon the State by prisoners bent on folly; clearly devalues the intent of the law and undermines the ligitimate role religion plays in the rehabila- tative process amongs serious minded adherents to legitimate "reconized" - religious Orders.

Religion is Law, and Law is Government. Without the one the others cannot exist. And it was never questioned in this instance was Respondent- a member of a ligitimate religious order. So why the limitations?

C O N C L U S I O N

WHEREFORE, your Respondent respectfully urge the Honorable Justices to consider carefully the respondents reply argument, and determine that - this cause must be returned to determine did a compelling interest exist - to warrant the **"substantial burden"** imposed on the Respondent a sincere ad -herent to the Islamic Faith. Then if so, deny petitioners bid for a Petit -ion for a Writ of Certiorari; and, not to stay this cause pending the out -come of **City of Boerne v. Flores, No. 95-2074,** the answer to be addressed in this matter is fundamentally setforth different.

Respectfully Submitted,

By: John Mack

A D H E R A N T/ M a c k
Pro Se Reg. No. A-73457

COUNSEL OF RECORD

A P P E N D I X

App. 1

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

NO. 95 - 1331

John Mack,
Plaintiff-Appellant,

-vs-

Micheal O'Leary, et al.,
Defendants-Appellees

APPEAL FROM THE UNITED STATES DISTRICT

COURT FOR THE NORTHERN DISTRICT

OF ILLINOIS EASTERN DIVISION

Honorable Charles R. Norgle Senior Presiding

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF APPELLANT JOHN MACK

Mr. John Mack
Register No. A-73457
C.C.C. P.O. Box 7711
Centralia, Il. 62801

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

H. Stuart Cunningham
CLERK

Office of the Clerk

John Mack
Centralia - CNT
Centralia Correctional Center
#A-73457 East-4 D-6
P.O. Box 7711
Centralia, IL 62801

Case Number: 1:94-cv-00621

Title: Mack v. O'Leary

Assigned Judge: Honorable Charles R. Norgle, Sr

MINUTE ORDER of 1/6/95 by Hon. Charles R. Norgle Sr : The Court denies plaintiff's motion for a short biography. [36-1] Mailed notice

This order was entered on the docket by the Clerk January 9, 1995

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

H. Stuart Cunningham
CLERK

Office of the Clerk

John Mack
Centralia - CNT
Centralia Correctional Center
#A-73457 East-4 D-6
P.O. Box 7711
Centralia, IL 62801

Case Number: 1:94-cv-00621

Title: Mack v. O'Leary

Assigned Judge: Honorable Charles R. Norgle, Sr

MINUTE ORDER of 1/9/95 by Hon. Charles R. Norgle Sr : Defendants' motion to dismiss (doc. #22) is granted. The complaint is dismissed with prejudice and the case is closed. All pending motions are dismissed as moot (specifically doc. #36). Mailed notice

This order was entered on the docket by the Clerk January 10, 1995

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

Minute Order Form (rev. 12/90)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	CHARLES R. NORGLE	Sitting Judge if Other Than Assigned Judge	
Case Number	94 C 621	Date	January 9, 1995
Case Title	JOHN MACK v. MICHAEL O'LEARY, Deputy Director, SALVADOR GODINEZ, Warden, J. SPRINGBORN, J. SCHOMIG, Asst. Wardens		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "MOTION" box above]

(2) ☐ Brief in support of motion due _____

(3) ☐ Answer brief to motion due _____ Reply to answer brief due _____

(4) ☐ Ruling/Hearing on _____ set for _____ at _____

(5) ☐ Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(6) ☐ Pretrial conf. ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(7) ☐ Trial ☐ Set for ☐ re-set for _____ at _____

(8) ☐ Bench Trial ☐ Jury Trial ☐ Hearing held and continued to _____ at _____

(9) ☐ This case is dismissed ☐ with ☐ without prejudice and without costs ☐ by agreement ☐ pursuant to
☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)

(10) ☒ [Other docket entry] Defendants' motion to dismiss (doc. #22) is granted. The complaint is dismissed with prejudice and the case is closed. All pending motions are dismissed as moot (specifically doc. #36).

Charles R Norgle

(11) ☒ [For further detail see ☐ order on the reverse of ☒ order attached to the original minute order form.]

☐ No notices required, advised in open court			number of notices
☐ No notices required			date docketed
☐ Notices mailed by judge's staff			docketing dpty initials
☐ Notified counsel by telephone			date mailed notice
☒ Docketing to mail notices			mailing dpty initials
☒ Mail AO 450 form			Document #
☐ Copy to judge/magistrate judge			
courtroom deputy's initials	Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN MACK, Plaintiff, v. MICHAEL O'LEARY, Deputy Director, SALVADOR GODINEZ, Warden, J. SPRINGBORN, Assistant Warden, and J. SCHOMIG, Assistant Warden, Defendants.	)	No. 94 C 621 HONORABLE CHARLES R. NORGLE

OPINION AND ORDER

CHARLES R. NORGLE, SR., District Judge:

Before the court is the motion of defendants Michael O'Leary, Salvador Godinez, James M. Schomig, and Jerome Springborn ("defendants") to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failing to state a cause of action. For the following reasons, the motion is granted and the complaint is dismissed with prejudice.

FACTS[1]

Plaintiff John Mack ("Mack") is a convicted felon currently serving his sentence at Centralia Correctional Center in Centralia, Illinois. During the period relevant to this litigation, Mack was

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[1] The following facts are drawn from the complaint filed on January 31, 1994, and a pleading filed in response to defendants' motion to dismiss.

incarcerated at Stateville Correctional Center ("Stateville"). According to Mack's allegations, defendants deprived him of his right to freely exercise the Isla faith. The complaint alleges that in 1992 and 1993, defendants refused to allow Mack to worship and pray in the manner prescribed by the Muslim Community Standard during the Fast of Ramadan.

More specifically, Mack complains that during the relevant periods, he was forced to pray to Allah in a cafeteria where there was no facility or running water to purify his body, a cafeteria that was unclean and unsuitable for a religious observance, a cafeteria that was equipped with bolted tables which hindered Mack from taking the close body formation required to pray to Allah, and was forced to pray facing the guard tower. The prison officials at Stateville allowed Mack to purify himself only with the water available in his cell before being taken to the cafeteria. Mack was then allowed to consume his meal and to hold his prayer meeting at the conclusion of the meal.

DISCUSSION

On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), all well-pleaded factual allegations are presumed to be true. Land v. Chicago Truck Drivers, 25 F.3d 509, 511 (7th Cir. 1994). The court must view those allegations in the light most favorable to the plaintiff, Gould v. Artisoft, Inc., 1

F.3d 544, 546 (7th Cir. 1993), and accept all reasonable inferences to be drawn from those allegations as true. Meriwether v. Faulkner, 821 F.2d 408, 410 (7th Cir.), *cert. denied*, 484 U.S. 935 (1987). Furthermore, *pro se* complaints are to be liberally construed, and *pro se* civil rights complaints may be dismissed only "if it is beyond doubt that there is no set of facts under which the plaintiff could obtain relief." Wilson v. Civil Town of Clayton, Ind., 839 F.2d 375, 378 (7th Cir. 1988). The complaint must, however, state allegations, either directly or inferentially, to establish the necessary elements for recovery under the chosen legal theory. Glatt v. Chicago Park Dist., 847 F. Supp. 101, 103 (N.D. Ill. 1994).

In the instant action, Mack seeks to recover monetary damages from defendants in their individual capacities as well as in their official capacities as officials with the Illinois Department of Corrections ("IDOC"). Mack claims he is entitled to monetary damages because defendants violated his right to freely exercise his religion as guaranteed by the First and Fourteenth Amendment. In contrast, defendants contend that even if all of Mack's allegations are true, they fail to state a § 1983 cause of action. The court agrees.

The claim of constitutional violation against defendants in their official capacities is insufficient as a matter of law and must be dismissed pursuant to Federal Rule of Civil Procedure

12(b)(6) with prejudice. A suit against a state official in his or her official capacities is treated as a suit against the State. Hafer v. Melo, 502 U.S. 21, 112 S. Ct. 358, 361 (1991); Frances J. v. Wright, 19 F.3d 337, 342 (7th Cir.), *cert. denied*, 115 S. Ct. 204 (1994). While a local governmental entity may be subject to liability under § 1983 because it is considered a "person" within the meaning of that provision, Baxter by Baxter v. Vigo County School Corp., 26 F.3d 728, 734 (7th Cir. 1994), a State is not a "person" subject to § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S. Ct. 2304, 2312 (1989). In this case, defendants are Illinois officials; thus, Mack's claim against them in their official capacities as IDOC officials, are outside the scope of § 1983.

Furthermore, Mack's claim against defendants in their official capacities is barred under the Eleventh Amendment. Garcia v. City of Chicago, Ill., 24 F.3d 966, 969 (7th Cir. 1994). "The Eleventh Amendment prohibits federal courts from deciding suits brought by private litigants against states or their agencies, and that prohibition extends to state officials acting in their official capacities." Id. This general rule is not without an exception. *See* Ex parte Young, 209 U.S. 123, 28 S. Ct. 441 (1908). The doctrine of Ex parte Young, however, is a narrow exception which the United States Supreme Court has declined to provide expansive effect. *See* Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy,

Inc., 113 S. Ct. 684, 688 (1993); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 104 S. Ct. 900, 909 (1984); Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 1357-58 (1974). The exception only applies to "prospective relief, does not permit judgments against state officers declaring that they violated federal law in the past and has no application in suits against the States and their agencies, which are barred regardless of the relief sought." Puerto Rico Aqueduct, 113 S. Ct. at 688 (citation omitted). In the instant matter, Mack complains of defendants' conduct in 1992 and 1993 and requests monetary relief. Accordingly, the general rule bars the claim against defendants in their official capacities.

State officials sued in their individual capacities are, however, "persons" for purposes of § 1983 and may be subject to liability. Hafer, 112 S. Ct. at 360. Nonetheless, Mack's claim against defendants in their individual capacities does not fare any better. To state a cause of action under § 1983 against defendants in their individual capacities, Mack must establish two elements: (1) that defendants were acting under color of state law; and (2) that their conduct deprived plaintiff of his federal rights. Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 1912-13 (1981); Procopio v. Johnson, 994 F.2d 325, 328 (7th Cir. 1993); Letisha A. by Murphy v. Morgan, 855 F. Supp. 943, 947 (N.D. Ill. 1994). Defendants do not challenge the sufficiency of the complaint as it

relates to the first element. They do, however, contend that Mack fails to establish the second element in his complaint.

It is well established that prison inmates retain the right to freely exercise their religious beliefs under the Free Exercise Clause of the First Amendment. Alston v. DeBruyn, 13 F.3d 1036, 1039 (7th Cir. 1994). The right of a lawfully incarcerated individual under the Free Exercise Clause, however, is not as expansive as the right of a non-incarcerated individual. O'Lone v. Estate of Shabazz, 107 S. Ct. 2400, 2404 (1987); Richards v. White, 957 F.2d 471, 474 (7th Cir. 1992). With lawful incarceration, many privileges and rights, including the right to exercise religion, are restricted and limited. Id. (citing Price v. Johnston, 334 U.S. 266, 68 S. Ct. 1049, 1060 (1948)). Prison officials are required to make only a reasonable effort to provide the inmates an opportunity to practice their religion. Alston, 13 F.3d at 1039. "The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives--including deterrence of crime, rehabilitation of prisoners, and institutional security." O'Lone, 107 S. Ct. at 2404.

The court recognizes that Congress enacted the Religious Freedom Restoration Act of 1993 ("Act"), 42 U.S.C. § 2000bb, *et seq.*, "to restore the compelling interest test as set forth in [Sherbert v. Verner,] 374 U.S. 398 (1963) and [Wisconsin v. Yoder,]

406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened . . . ." 42 U.S.C. § 2000bb(b). The Act provides a statutory claim or defense to those individuals whose religious freedom is "substantially burdened" by a governmental entity. Means v. Wortham, 115 S. Ct. 460, 460 n.1 (1994) (mem.). The Act, however, has no application in this case because the complaint fails to establish that defendants "substantially burdened" Mack's exercise of his belief. *See* Brown-El v. Harris, 26 F.3d 68, 69 (8th Cir. 1994).

The allegations in this case demonstrate that, while Mack was incarcerated in Stateville, defendants made a reasonable effort to provide him an opportunity to practice his faith during the month of Ramadan in 1992 and 1993. Defendants gave Mack the opportunity to purify his body before being escorted to the cafeteria and permitted to worship and pray with other followers in the cafeteria. While the allegations establish that worshipers were unable to do certain things during prayer, the allegations do not rise to the level of "substantial burden." The alleged restrictions imposed by the physical limitations of the facility may interfere with the desired method of prayer, but the restrictions do not trespass upon Mack's ability to retain and worship the principle that is central to Islam. *See* Vernon v. City of Los Angeles, 27 F.3d 1385, 1393 (9th Cir.), *cert. denied*, 115 S.

Ct. 510 (1994). Thus, Mack fails to satisfy the second element necessary to state a § 1983 claim against defendants in their individual capacities.

CONCLUSION

For the foregoing reasons, the motion of defendants to dismiss the complaint is granted and the complaint dismissed with prejudice.

IT IS SO ORDERED.

ENTER:

Charles R. Norgle

CHARLES RONALD NORGLE, SR., Judge
United States District Court

DATED: 1/9/95

AO 450 (Rev. 5/85) Judgment in a Civil Case ●

United States District Court

NORTHERN DISTRICT OF ILLINOIS

Eastern Division

JOHN MACK

JUDGMENT IN A CIVIL CASE

V.

MICHAEL O' LEARY, et al.

CASE NUMBER: 94 C 621

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motion of defendants to dismiss the complaint is granted and the complaint is dismissed with prejudice.

January 9, 1995

Date

H. STUART CUNNINGHAM

Clerk

(By) Deputy Clerk

U.S. GOVERNMENT PRINTING OFFICE: 1985—494-002

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

JUDGMENT- WITHOUT ORAL ARGUMENT

Date: April 3, 1996

BEFORE: Honorable RICHARD A. POSNER, Chief Judge

Honorable DANIEL A. MANION, Circuit Judge

Honorable MICHAEL S. KANNE, Circuit Judge

No. 94-1849

JOHN L. LIPSCOMB-BEY,
Plaintiff - Appellant,

v.

HOWARD A. PETERS, III, GEORGE C. WELBORN, Warden Menard Correctional Center, ALAN L. FRENTZEL, Assistant Warden of Menard Correctional Center, et al.,
Defendants - Appellees.

No. 95-1331

JOHN MACK,
Plaintiff - Appellant,

v.

MICHAEL O'LEARY, et al.,
Defendants - Appellees.

Appeals from the United States District Court for the Southern District of Illinois, East St. Louis Division
No. 92 C 55, William D. Stiehl, Judge (94-1849)
No. 94 C 621, Charles R. Norgle, Sr. Judge (95-1331)

The judgment of the district court in appeal No. 95-1331 is AFFIRMED in part (the part based on the Eleventh Amendment), but is otherwise REVERSED and REMANDED for further proceedings. Appeal No. 94-1849 is AFFIRMED. The above is in accordance with the decision of this court entered on this date.

(1060-110393)

United States Court of Appeals

jmp

For the Seventh Circuit
Chicago, Illinois 60604

May 9, 1996

By the Court:

JOHN L. LIPSCOMB-BEY, Plaintiff-Appellant, No. 94-1819 v. HOWARD A. PETERS, III, GEORGE C. WELBORN, Warden Menard Correctional Center, ALAN L. FRENTZEL, Assistant Warden of Menard Correctional Center, et al., Defendants-Appellees.	]	Appeal from the United States District Court for the Southern District of Illinois, East St. Louis Division. No. 92 C 31 William D. Stiehl, Judge. No. 92 C 55 William D. Stiehl, Judge.
JOHN MACK, Plaintiff-Appellant, No. 95-1331 v. MICHAEL F. O'LEARY, Deputy Director, SALVADOR A. GODINEZ, Warden, JEROME L. SPRINGBORN, Assistant Warden, et al., Defendants-Appellees.	]	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 94 C 621 Charles R. Norgle, Judge.

(OVER)

SYLVESTER SASNETT, WILL HIGHFILL, LONNIE SMITH, et al., individually and on behalf of others similarly situated, Plaintiffs-Appellees,	Appeal from the United States District Court for the Western District of Wisconsin.
and UNITED STATES OF AMERICA, Intervening Plaintiff-Appellee,	No. 94 C 52
No. 95-3924 v.	Barbara B. Crabb, Judge.
MICHAEL J. SULLIVAN, Secretary, Department of Corrections, KEN SONDALLE, Administrator, Division of Adult Institutions, JEFFREY P. ENDICOTT, Warden, Columbia Correctional Institution, et al., Defendants-Appellants.	

Upon consideration of the MOTION TO CONSOLIDATE FOR PURPOSE OF DECISION, filed May 8, 1996, by counsel for the appellees,

IT IS ORDERED that the motion is **DENIED**.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

January 8, 1997

Before

Hon. Richard A. Posner, Chief Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Michael S. Kanne, Circuit Judge

JOHN MACK, *Plaintiff-Appellant,*	}	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 94 C 621 Charles R. Norgle, Sr., *Judge.*
No. 95-1331 v.	}	
MICHAEL O'LEARY, *et al.*, *Defendants-Appellees.*	}	

JOHN LEE LIPSCOMB-BEY, *Plaintiff-Appellant,*	}	Appeal from the United States District Court for the Southern District of Illinois. Nos. 92 C 31, 92 C 55 William D. Stiehl, *Judge.*
No. 94-1849 v.	}	
HOWARD A. PETERS III, *et al.*, *Defendants-Appellees.*	}	

ORDER

Defendants-appellees filed a petition for rehearing, and a supplement thereto, with suggestion for rehearing en banc. All the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the suggestion for rehearing en banc. The petition is therefore DENIED.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

June 3, 1997

John Mack, #A-73457
Danville Correctional Center
R.R. #5; Rt. 136
P.O. Box 4001
Danville, IL 61834

Re: 96-1598 – O'Leary, Michael, et al.
v. John Mack, et al.

Dear Mr. Mack:

On April 9, 1997, a petition for a writ of certiorari in the above case was filed in this Court to review an order of the United States Court of Appeals for the Seventh Circuit (No. 95-1331/9), dated April 3, 1996. Our records indicate that you were served with a copy of the petition.

The Court has directed this office to request that a response be filed in this case. Forty printed copies of your response, together with proof of service thereof, should be filed on or before July 3, 1997.

Your attention is directed to the provisions of Rule 33 of the rules of this Court. Please note that the color of the cover of your brief should be orange.

Sincerely,

W. K. Suter

William K. Suter
Clerk

Cc: John Lipscomb-Bey
Rita M. Novak, Esquire

CHAPTER 21B.
RELIGIOUS FREEDOM RESTORATION

§ 2000bb. Congressional findings and declaration of purposes

(a) **Findings.** The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) **Purposes.** The purposes of this Act are—

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

§ 2000bb-1. Free exercise of religion protected

(a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

§ 2000bb-2. Definitions
As used in this Act—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means the exercise of religion under the First Amendment to the Constitution.

§ 2000bb-3. Applicability

(a) **In general.** This Act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act [enacted Nov. 16, 1993].

(b) **Rule of construction.** Federal statutory law adopted after the date of the enactment of this Act [enacted Nov. 16, 1993] is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(c) **Religious belief unaffected.** Nothing in this Act shall be construed to authorize any government to burden any religious belief.

§ 2000bb-4. Establishment Clause unaffected

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding benefits or exemptions.

بسم الله الرحمن الرحيم

WITH THE NAME ALLAH...THE GRACIOUS, THE COMPASSIONATE

AI-ISLAM literally means submission to the will of Allah (Creator).

MUSLIM means one who is submitting to the will of Allah (Creator).

Articles of Faith

Muslims accept the following six items as our articles of faith:

1. There is no deity except Allah (Creator).
2. Muslims believe in all of the scriptures (books) of Allah (Creator), and they believe the Holy Qur'an is the Last Revelation.
3. Muslims believe, or accept, all Prophets from Allah (Creator). Some of these Prophets are Abraham, Moses, Jesus, and Muhammad.
4. Muslims believe in Angels that perform specific functions in Creation under the authority of Allah (Creator).
5. Muslims believe in the Day of resurrection, judgement, and life after death.
6. Muslims believe in the divine ordinance.

PRINCIPLES OF AL-ISLAM

The religion of Al-Islam has principles of practice that are obligatory on all adult muslims:

1. To testify that Allah (Creator) is the only deity and Prophet Muhammad is His Messenger. (Shahadah)
2. Prayer at five prescribed times each day. (Salat)
3. Charity. (Zakat)
4. Fasting during the ninth month of the lunar calendar...(Ramadan.)
5. Pilgrimage to Mecca at least once during a lifetime if it is affordable. (Hajj)

Muslims do not worship Prophet Muhammad. The only object of worship for Muslims is Allah (Creator). Muslims do not believe that Allah (Creator) is like anything in creation (universe).

Visit a Masjid or Muslim Community Center in your area to learn more about the Religion of Al-Islam.

WUDU
(Ablution or Wash)

To prepare yourself for the wonderful experience known as prayer and to bring yourself into the right spiritual mood, it is required that you perform WUDU before prayer. First you say your intentions; (I intend to purify myself for the service of worship to Allah).

1. Washing the hands to the wrist (3) times doing the right hand first: The hands symbolize actions, the hand does the conscience act of the body and mind, so we clean those actions first. The right hand is our strength, the left hand follows.

2. Rinsing the mouth out (3) three times: The mouth symbolize expression. Lies comes from the mouth, we want the mouth clean at all times.

3. Rinsing the nose (3) three times, each nostril: The nose symbolize desires. We have people saying he's nosy or he's putting his nose in somebody's business.

4. Washing the face (3) three times, using both hands: The face is the symbol of character. You can watch some peoples face and tell whats on their mind and the next move they are going to make.

5. Wash the arms, up to the elbows (3) three times: Arms are the symbol of power. When we clean our power then that clean power can be used to check the other powers in us or in our society to clean them up.

6. Wash the ears once (using both hands at the same time): Ears are the symbol of knowledge and understanding. Our ears should always be clear and open to hear, to listen to what is good.

7. Wash the head once, using both hands: The head also is the symbol of knowledge. If mans knowledge is not clean we will have corruption from our own (self) knowledge.

8. The feet are last, but not least; each is to be washed (3) three times each. Feet symbolize our habits. We must have clean habits. Society has been walking and steping in filth since the dawn of time. Mans steps (habits) in the society should be clean and in a righteous direction.

بسم الله الرحمن الرحيم

"Ramadan Karim Mubarak"

Ramadan Karim means "may you have a generous Ramadan." Karim as an Arabic term is rich in expression. It also means the gifts that enhance the worth of the human being in terms of moral dignity and self-respect. Karim means noble, honorable, repectable and generous.

Ramadan Mubarak means "Blessed Ramadan." We do not just want to come out with the human dignity and be without the blessings of increased faith and enlightenment. Allah blesses us from directions we do not perceive.

The nights of Ramadan are for prayers and contemplation on the Guidance of Allah and His blessings in our lives. The days of Ramadan are for restraint of appetities and to teach discipline to stay away from forbidden things.

During Ramadan, the Muslim keeps his or her mind on things that are valuable, important, good and clean. If you did not keep your mind on Allah and on higher values of life, your fasting would have been hard for you. For Ramadan is not just abstinence of food, it is a fast of the total person - physically, spiritually, and mentally. The greatest benefit of fasting is "self-mastery." Fasting gives us the strength to overcome the drive of physical needs.

In the Holy Qur'an Allah says that fasting is for Him. During the Ramadan fast, the Muslim reflects on Allah and thanks Allah. He reflects on the wonders and truth of creation that supports the heavens and design of creation.

And we leave with "Eid Karim Mubarak."

Imam W. Deen Mohammed and the M.A.C.A. Staff

Believers: On behalf of myself and my family, we wish to extend thanks to you for your many Eid Greetings. We also wish you a blessed and happy Eid. W. D. Mohammed

Prepare for Ramadan!

Dr. Muzammil Siddiqi

Salman reported at the Prophet (peace be upon him) gave us a sermon on the last day of Sha'ban. He said:

"O people, a great and blessed month is approaching you. There is a night in this month which is better than one thousand months. Allah has made fasting in this month an obligation and night prayers an act of voluntary obedience. Whoever will do a good deed in this month will receive the reward as great as the reward of obligatory **(fard)** deeds in other days; and, whosoever will do a fard in this month will receive the reward as great as of seventy fard done at other times.

This is the month of perseverance and the reward of perseverance is paradise. This is the month of kindness and compassion. In this month the good fortune of believers is increased. Whoever will invite a fasting person in this month for **iftar** with him will find forgiveness for his sins and deliverance from punishment of hell and he will receive the reward of one who is fasting without any reduction in the reward of that person himself . . .

The first part of this month is mercy, the middle part of this month is forgiveness and the last part of this month is deliverance from the punishment of hell.

Once again in our life we have the opportunity to witness the blessed month of Ramadan and take benefit from the experience of fasting, additional prayers and good deeds.

Ramadan is the spring season of goodness and virtue. It is a time when you can strike a special bargain on the blessings of God.These blesssings are available to all mankind in plenty and at a great "discount." Why is the bargain so good and blessings so plentiful in this month? What is the significance of this month? And why do we fast? Let me answer these questions briefly.

In many religions of the world there is something called "auspicious time" or "sacred time." That time is associated either with harvest, spring season, or the birth of a hero, saint or holy person, or some historical event important in that particular religious traditon. The month of Ramadan is, in a similar way, an auspicious time, and a sacred time. It is associated with the revelation of the Holy Qur'an.

The Qur'an says:
Ramadan is the month in which was sent down the Qur'an as a guide to mankind and clear signs of guidance and judgment between right and wrong. (2:185)

The revelation of the Holy Qur'an began in this month. Since the advent of the Holy Qur'an is the greatest manifestation of Divine guidance and love for mankind. The month that is associated with the Holy Qur'an is considered as the blessed and great month. Ramadan is, thus, the month of the Qur'an.

Why do Muslims fast in this month? We fast in this month because it is the command of God to recognize this month and to thank Him for giving the Qur'an in this month. There is furthermore a special relationship between Divine revelation and fasting. Prophet Muhammad - peace be upon him - was fasting in Hira when he received the revelation of Allah and he was granted the first revelation of the Qur'an. Other Prophets too received revelation while they were fasting. Prophet Moses was in Sinai fasting for forty days when he received his first revelation. Prophet Jesus too was fasting for forty days when he received his first call to Prophethood.

Fasting awakens the heart, enlightens the spirit and prepares the mind to receive the word of God. It is like shining the mirror to see the good reflection and image in it. We have to cleanse our heart and mind from gross materialism to let the word of God shine in it. It is for this reason that muslims are urged to increase their reading of the Qur'an during this month. They do their individual reading of the Qur'an and they also listen to it in their **tarawih** prayers.

We human beings are a combination of body and soul. Our body pulls us towards its source and origin, that is towards the earth, the material things: food, drink and sex; but our soul has a celestial source and origin. It calls us to rise above the monotonous routines of eating and drinking and appeasement of other urges of flesh. There is always a tussle and conflict between the urges of the body and urges of the spirit. Islam wants to create a harmoneous relation and a balance between these two extremes. Through fasting we learn how to control ourselves and how to discipline our urges. Islamic fast is a disciplinary fast. It changes the routine of eating and drinking and gives a new schedule for a month. This is good for our spiritual and moral well-being as well as for our physical strenghth and stamina.

Publication Committee

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Essay Competitior

Essay Competition offered by Wome Committee. Open to all youth of t Islamic Society of Orange County

Topic:
In Contemplation of our inevitat questioning by Allah on the Day Judgement write an essay abou yourself and how you would answer th questions regarding the use of you YOUTH, your TIME, your LEISURE, your HEALTH, and your WEALTH.

Include your past in general and your future (Inshallah) with plans for accomplishment. Write your first draft with all the details that only you and Allah would know. Keep this for yourself. Make a second draft using generalities to avoid those things that are too personal to be shared and made public. Essays should be 3-4 typewritten pages and are due by May 16, 1987. (please turn into the office to the attention of the Women's Committee)

Some Rules About Fasting

Dr. Muzammil Siddiqi

Fasting is mandatory on every Muslim who is, adult, not sick and not on a journey. Additional condition in the case of women is freedom from menstruation and post child birth confinement periods.

Exemptions from Fasting

1. The insane.

2. Children who are not adolescent yet.

3. The elderly and the chronically ill for whom fasting is unreasonably strenous. A person, in this category, however, is required to feed one poor person for every day of Ramadan in which he/she misses fasting.

4. Pregnant women and nursing mothers who fear that fasting may endanger their lives or health or those of their fetuses or infants.

5. Those who are ill or traveling provided that they make up the missed days of fasting when they are well.

6. Women during the period of menstruation or of post-childbirth confinement. Fasting during these periods is not permitted and it should be made up later, a day for a day.

Duration of Fasting

Fasitng starts every day in Ramadan a few minutes before Fajr time (Dawn) and ends soon after sunset. If one doubts whether it is Fajr time yet, he may continue to eat and drink until he is certain. It is certainty that counts, not doubt. Allah says: "And eat and drink, until the white thread of dawn appear to you distinct from its black thread; then complete your fast till the night appears . . .(2:187)

Requirements for the Validity of Fasting

1. Abstaining from food, drink, smoking and sex between dawn and sunset for each day in Ramadan.

2. The intention to fast before dawn every day. The intention need not be in words and is valid at any time after sunset (for the following day). According to some jurists, the intention can be made only once for the whole month (i.g., in the night preceding the first day of Ramadan).

Desirable Things in Fasting

1. To take a pre dawn meal (called shuoor) as close to Fajr time as possible. Prophet Muhammad (S.A.W.) says: "Partake Suhoor for there is blessing in Suhoor." (Bukhari, Muslim)

The blessings of Suhoor include strenghtening the fasting person, enabling him/her to continue to be active during the day, and making fasting tolerable.

2. To break the fast as soon as one is sure that the sun has set.
Prophet Muhammad (peace be upon him) said: "If any of you was fasting, let him break the fast with dates. If he can't find dates let him break the fast with water, for water is wholesome. (At-Tirmidhi)

3. When breaking the fast, it is recommended to make Du'a (Prayer). Following are two versions of the Prophet's Du'a.

"O Allah for you did I fast and with your bounties do I break the fast." (Abu-Dawood)

"Gone is the thirst and moistured are the veins and achieved is the reward by the will of Allah." (Abu-Dawood)

Continued on page 12

Fastings *Continued from page 4*

4. To avoid any act which is contradictory to fasting, the Prophet (peace be upon him) said: "Fasting is not (mere) refraining from food and drink. Fasting is refraining from vain talk and indecency. And if one slanders you or agresses against you, say I am fasting, I am fasting. (Al-Hakim)

5.To be more generous especially to the poor and to spend more time studying the Qur'an. Also to have more voluntary Salah and taraweeh Prayer.

Things which do not invalidate Fasting

During Fasting, the following things are permissible:

1. Bathing. The Prophet (S.A.W.) was reported to have poured water over his head while he was fasting either because of thirst or heat. (Ahmad, Malik and Abu-Dawood) If water is swallowed involuntrily, it does not invalidate fasting.

2. The use of Kuhl (eye powder). Anas reported that the Prophet (S.A.W.) used to use Kuhl while fasting.

3. Kissing one's husband or wife provided that one is able to control himself/herself from sexual excitement.

4. Rinsing the mouth or nostrils with water provided that it is not overdone (so as to avoid swallowing water).

5. Swallowing things which are not possible to avoid such as one's own secretions (e.g. saliva) or street dust . . . etc.

6. Tasting the food being purchased or cooked) with the tip of the tongue. (This was reported by Ibn Abbas.)

7. Taking injections (of any type).

8. Smelling flowers or wearing perfumes, etc.

9. One may continue his/her fast even if he/she is Junub, (the state after intercourse and before bathing). Likewise, women at the end of the periods of menstruation post-child birth confinement periods may start fasting if bleeding stops at night (anytime before dawn). In all of the above cases, bathing may be delayed until the following morning and the fast is valid.

10. If one forgets that he/she is fasting and he/she eats or drinks, provided that one should stop eating or drinking as soon as he/she remembers. The same rule applies to those who are involuntarily forced to break the fast.

11. In either case, the person must continue to fast for the rest of the day.

Things Which Invalidate the Fast

Those which invalidate fasting and require Qada' Only (making up the missed day or days, a day for a day).

1. Eating and/or drinking deliberately (including partaking non-nourishing items by the mouth).

2. Deliberately causing oneself to vomit.

3. The beginning of menstruation or post-childbirth bleeding even in the last moment before sunset.

4. Ejaculation for reasons other than sexual intercourse, (e.g. kissing or hugging one's wife).

5. Eating, drinking, smoking or having sexual intercourse after Fajr (dawn) on the mistaken assumption that it is not Fajr time yet. Similarly, engaging in these acts before Maghrib (sunset) on the mistaken assumption that it is already Maghrib time.

If one breaks ones fast deliberately (by eating, drinking, sexual act) then the penalty is fasting sixty days (after Ramadan) without interruption.

STATE OF ILLINOIS)
) SS.
COUNTY OF VERMILION)

AFFIDAVIT OF SERVICE

I, JOHN MACK, #A-73457, state that I served a copy of the document to which this affidavit is attached upon each party, or, if represented by counsel, upon the attorney of record for said party(ies) by enclosing the same in a sealed envelope are (Forty Printed Copy Of My Brief) plainly addressed as is discloosed by the pleading s of record herein and by depositing each of envelopes in the box designated for United States Mail at Danville Correctional Center, Danville, Illinois, 61834-4001-2, together with a Money Voucher for Amount Due attached, addressed to the Clerk; William K. Sutter, Of The United States Supreme Court, Office Of The Clerk Washington, DC 20543-0001. On this 30th, day of June, 1997.

John Mack A-73457
JOHN MACK, #A-73457

VERIFICATION OF CERTIFICATION

I, JOHN MACK, #A-73457, the undersigned, certify and state that:

1. I am the Respondent, in the above captioned legal matter;
2. I have read the Foregoing application and have knowledge of its contents; and
3. Under penalties as provided by law pursuant to sec. 1-109 of the Code of Civil Procedure, I certify that the statements set forth in the foregoing motion and this affidavit are true and correct except as to matters therein stated to be on information and belief, and as to such matters I certify - that I believe the same to be true.

John Mack #A-73457
JOHN MACK, #A-73457

SUBSCRIBED AND DECLARED TO ME
BEFORE ME THIS 30 June, DAY
Carol DeMoss,
NOTARY PUBLIC

OFFICIAL SEAL
CAROL DEMOSS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 5-6-99